

business concern qualifies as small under the above definition, business (control) affiliations<sup>14</sup> must be included.<sup>15</sup> Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).<sup>16</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

8. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6 million or less in annual receipts as a small business.<sup>17</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>18</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>19</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>20</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>21</sup> According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

9. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having \$12.5 million or less in annual receipts.<sup>22</sup> According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year.<sup>23</sup> Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million to \$24,999,999.<sup>24</sup> Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.<sup>25</sup>

<sup>14</sup> "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

<sup>15</sup> "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size." 13 C.F.R. § 121.103(a)(4).

<sup>16</sup> *Broadcast Station Totals as of September 30, 2002*, FCC News Release (rel. Nov. 6, 2002).

<sup>17</sup> See 13 C.F.R. § 121.201, NAICS code 515112 (changed from 513112 in October 2002).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

<sup>23</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (including Legal Form of Organization)*, Table 4, NAICS code 513220 (issued Oct. 2000).

<sup>24</sup> *Id.*

<sup>25</sup> See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). The

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10. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>26</sup> We have estimated that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.<sup>27</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

11. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, (Act) also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>28</sup> The Commission has determined that there are 67,700,000 subscribers in the United States.<sup>29</sup> Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>30</sup> Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.<sup>31</sup> The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>32</sup> and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Act.

12. *Multipoint Distribution Systems*. The established rules apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average

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preliminary data indicate that the total number of "establishments" increased from 4,185 to 6,118. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

<sup>26</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

<sup>27</sup> Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

<sup>28</sup> 47 U.S.C. § 543(m)(2).

<sup>29</sup> See *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (Jan. 24, 2001).

<sup>30</sup> 47 C.F.R. § 76.901(f).

<sup>31</sup> See *FCC Announces New Subscriber Count for the Definition of Small Cable Operators*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (rel. Jan. 24, 2001).

<sup>32</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>33</sup> This definition of small entity in the context of MDS auctions has been approved by the SBA.<sup>34</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

13. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating \$12.5 million or less in annual receipts.<sup>35</sup> This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of \$11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.<sup>36</sup>

14. *Instructional Television Fixed Service.* The established rules would also apply to Instructional Television Fixed Service (ITFS) facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS.<sup>37</sup> There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.<sup>38</sup> However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the established rules.

15. *Satellite Telecommunications and Other Telecommunications.* The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.<sup>39</sup> For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>40</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

<sup>33</sup> 47 C.F.R. § 21.961(b)(1).

<sup>34</sup> See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

<sup>35</sup> 13 C.F.R. § 121.201, NAICS code 515210.

<sup>36</sup> See *supra* note 25.

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 515210.

<sup>38</sup> 5 U.S.C. § 601(3).

<sup>39</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>40</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (Including Legal Form of Organization)*, Table 4, NAICS code 513340 (issued Oct. 2000).

16. The second category – *Other Telecommunications* – includes “establishments primarily engaged in ... providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>41</sup> Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional 6 firms had annual receipts of \$10 million to \$24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

17. In today’s *Order*, we have taken steps to advance our public safety mission by adopting rules that expand the reach of EAS, as currently constituted, to cover the following digital communications technologies: digital television and radio, digital cable, and satellite television and radio.

18. As indicated above, we have revised our EAS rules to make them apply to DTV broadcasters. The *Order* requires that DTV broadcasters comply with our Part 11 rules.<sup>42</sup> Thus, DTV broadcasters must participate in all national EAS activations. Participation in state and local EAS activations will remain voluntary, but if DTV broadcasters choose to transmit state and local EAS messages they must comply with the Commission’s Part 11 rules governing those messages. Essentially, DTV providers will now have the same EAS obligations as analog television broadcasters. In addition, the *Order* requires that, when DTV broadcasters participate in EAS activations, they must provide the EAS message to viewers of all program streams.<sup>43</sup>

19. We have revised our EAS rules to require digital cable systems to participate in national level EAS activations. Digital cable systems will now have the same EAS obligations as analog cable systems.<sup>44</sup> Participation in state and local EAS activations will continue to be voluntary, but digital cable systems that choose to participate must comply with the Part 11 rules. The *Order* requires that digital cable systems with fewer than 5,000 subscribers must, like analog and wireless cable systems with fewer than 5,000 subscribers, provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.<sup>45</sup>

20. We also have revised our EAS rules to make them apply to digital audio broadcasting (DAB) providers. The *Order* requires DAB providers to air all national EAS messages.<sup>46</sup> Participation in state and local EAS activations will be voluntary, as it is for analog radio broadcasters. If DAB providers choose to participate in state and local EAS activations, they must comply with Part 11 of our rules. DAB providers will now have the same EAS obligations as analog radio broadcasters. The *Order* also requires DAB providers to transmit all EAS messages that they air on all audio streams.<sup>47</sup>

21. We have revised our EAS rules to require that all Satellite Digital Audio Radio Service

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<sup>41</sup> Office of Management and Budget, North American Industry Classification System, 513 (1997) (NAICS code 513390, changed to 517910 in Oct. 2002).

<sup>42</sup> See *supra* *Order* at para. 21.

<sup>43</sup> *Id.* at para. 23.

<sup>44</sup> *Id.* at para. 30.

<sup>45</sup> *Id.* at para. 32.

<sup>46</sup> *Id.* at para. 36.

<sup>47</sup> *Id.*

(SDARS) licensees participate in EAS in its current form. The *Order* requires SDARS licensees to transmit national level EAS messages on all channels.<sup>48</sup> We also strongly encourage SDARS licensees to have the ability to receive EAS alerts from state and local emergency managers and the ability to disseminate state and local EAS warnings on any local traffic and weather channels that the SDARS licensees provide. We have required SDARS licensees to inform their customers of the channels that will and will not supply state and local EAS messages. This information should be provided on the SDARS licensee's website and should also be distributed in writing to customers at least annually.

22. In addition, in order to ensure that Direct Broadcast Satellite (DBS) subscribers receive an EAS message from the President in the event of a national emergency, we have revised our EAS rules to require that DBS providers participate in national EAS activations.<sup>49</sup> For purposes of this *Order*, DBS providers include the entities set forth in section 25.701(a) of the Commission's rules.<sup>50</sup> The *Order* permits DBS providers to determine the method they will use to distribute EAS messages to viewers, as long as all viewers receive the national EAS message on the channel they are watching. We note that SBCA commented that DBS providers need additional development time to participate in national EAS activations. SBCA focuses on the technical and operational difficulties involved in investing in new hardware and software, but has provided no cost estimate.<sup>51</sup> However, DIRECTV commented that it was prepared to commit the assets to develop the systems and procedure necessary to deliver National EAS.<sup>52</sup> We have determined that the public safety benefit that would result from imposing a timely public alert and warning obligation on DBS providers far outweighs the burdens to such providers from implementing these new requirements.

23. Although participation in state and local EAS activations remains voluntary, we have required DBS providers to pass through all EAS messages aired on local channels to subscribers receiving those channels so that subscribers viewing local channels through DBS services will receive all EAS messages transmitted over those local channels. We have also required DBS providers to be capable of receiving (from state and local emergency managers) and distributing state and local EAS messages or they must disclose their inability to do on their website and in writing to their customers at least annually.<sup>53</sup>

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<sup>48</sup> *Id.* at para. 43.

<sup>49</sup> *Id.* at para. 53.

<sup>50</sup> See 47 C.F.R. § 25.701(a). For purposes of this *Order* we use the definition of DBS providers set forth in this section of our rules. Accordingly, DBS providers include: (1) entities licensed to operate satellites in the 12.2 to 12.7 GHz DBS frequency bands; (2) entities licensed to operate satellites in the Ku band fixed satellite service (FSS) and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set aside of at least one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules, or (3) non U.S. licensed satellite operators in the Ku band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules. See 47 C.F.R. § 25.701(a).

<sup>51</sup> See SBCA Comments at 3-4 (stating that "DBS operators could, with sufficient lead time, participate in the national EAS system, although in a manner that would look very different than the EAS message formats currently prescribed for cable operators and broadcasters. But that such participation would entail technical and operational difficulties – including potential interference with more useful local broadcast EAS information.").

<sup>52</sup> *DIRECTV Ex Parte Comments* at 2-3.

<sup>53</sup> See *supra* Appendix B, 47 C.F.R. § 11.55(a)(2).

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>54</sup>

25. The *EAS NPRM* invited comments on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this *Order* that are increasingly being used by the American public. For example, the *EAS NPRM* specifically sought comment on the technical alternatives to providing EAS messages. In particular, the *EAS NPRM* sought comment on whether the EAS system could be made more efficient. Should it be phased out in favor of a new model? If so, what would the new model look like? If a new model were to be adopted, what legal and practical barriers would have to be overcome to ensure its implementation and effectiveness? What technologies should serve as the basis for such a model? Alternatively, should EAS requirements be extended to other services such as cellular telephones?<sup>55</sup>

26. The Commission has considered each of the alternatives described above, and in today’s *Order* imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and we anticipate that this addition of new providers to EAS can be accomplished swiftly and smoothly. We believe that the benefits of requiring DTV, DAB, digital cable, DBS and SDARS providers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. We agree with those commenters who argue that EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this *Order* either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost. As we have indicated above, we will continue, along with other agencies and industry, to explore ways in which emergency information might be made available in an efficient, effective, and technologically current fashion.

27. **Report to Congress:** The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>56</sup> In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>57</sup>

<sup>54</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>55</sup> See *EAS NPRM*, 19 FCC Rcd at 15776, para. 4.

<sup>56</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>57</sup> See 5 U.S.C. § 604(b).



## APPENDIX E

### INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided in Section IV of the item. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. Today's *Order*, which accompanies the *Further Notice*, is the Commission's first step to ensure that digital media is capable of receiving and disseminating EAS messages. In the *Order*, the Commission realized the immediate objective of ensuring that the large and growing segments of the population who rely on digital radio and television technologies are not left without access to alerts in the event of an emergency. Although the current EAS performs a critical function, the Commission believes it could be improved. An accurate, wide-reaching public alert and warning system is critical to the public safety and a vital part of the Commission's core mission to promote the safety of life and property through a robust communications system. The Commission believes that such a system should be technologically up-to-date, should have built-in redundancy features, and should use a variety of communications media to allow officials at the national, state and local levels to send messages to reach the greatest number of citizens in the affected areas in the most effective and efficient manner possible.

3. Accordingly, the Commission is initiating this *Further Notice* to seek additional comment on what actions the Commission, along with our Federal, State and industry partners, should take to help expedite the development of a robust, state-of-the-art, digitally-based public alert and warning system. The Commission also seeks comment on the appropriate role for the Commission among the various government and industry entities that are involved in the creation of this system. In their comments, parties should also comment on the Commission's statutory authority to regulate such a system.

4. The comments filed in response to the EAS Notice of Proposed Rulemaking (*EAS NPRM*) reveal a multitude of technical approaches to a digital alert and warning system, from specific approaches to individual technologies to broad approaches to architecture and protocol design. The Commission does not seek to duplicate that significant effort, but rather seeks comment on a representative group of issues. The issues on which comment is sought do not constitute an exclusive list. Parties can – and should – comment on any issues relevant to specific technologies that can aid the development of a next-generation alert and warning system.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*



5. Specifically, the Commission seeks comment on the appropriate role for the Commission in developing system architecture and common protocols that could be used for message distribution across different platforms. The Commission also asks questions specific to particular technologies, such as how DTH and SDARS could deliver local alerts; how best to involve wireless providers; and whether traditional wireline telephone companies that become content providers should have an obligation to provide alerts. To ensure that the American public receives public alert and warning in an accurate and timely fashion from this next-generation system, the Commission seeks comment whether it will need to adopt performance standards and reporting requirements.

6. The Commission also seeks comment regarding how it may, consistent with the *Order* adopted today, make EAS alerts more accessible to people with disabilities. The Commission is committed to ensuring that persons with disabilities have equal access to public warnings and are considered in emergency preparedness planning. The Commission notes that it previously sought comment on whether there are disparities in or conflicts between the EAS rules and the Commission's other disability access rules contained in section 79.2, and if so, the manner in which such disparities or conflicts could be resolved in subsequent rules. The Commission notes comments filed on this issue, and asks whether it should revise the EAS rules to require all video programming distributors subject to the Commission's EAS rules to provide the same information in both the visual and aural versions of all EAS messages, instead of only the header code information that EAS participants now provide visually or the critical details of the emergency information as required by section 79.2. Further, the Commission asks whether the EAS rules should require EAS participants to provide an audio feed that duplicates any text portion of an EAS alert. Finally, the Commission seeks comment on how any next-generation, digitally-based alert and warning system can be developed in a manner that assures that persons with disabilities will be given equal access to alert and warning as other Americans.

7. The Commission recognizes the historic and important role of states and localities in public safety matters, and the essential role of states and localities in public safety matters, and the essential role that state and local governments play in delivering alert and warning. Accordingly, the Commission seeks comment on how it can best work with the states to help implement the EAS rules adopted in the *Order* as well as to develop the next generation of alert and warning systems. In particular, the Commission notes that there is a vital connection between state and local alert and warning and Federal efforts to mitigate disasters. The Commission seeks comment on whether its rules should be revised to require that states notify the Commission of any changes in EAS participants' state EAS Local Area and/or EAS designation (PEP, LP1, LP2, SR, LR, etc.) within thirty days of such change, and in the absence of a change, a yearly confirmation that all state EAS Local Area and EAS designations remain the same.

8. On September 22, 2005, the Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council filed a Petition for Immediate Relief with the Commission proposing changes to the Commission's EAS rules to require stations to air EAS messages in other languages in addition to English. The Commission seeks comment on the issues raised in the petition and, for that purpose, incorporates the petition as well as the other pleadings filed in response to the petition into the record of this proceeding. The Commission seeks comment on how this proposal would be implemented, and seeks comment on any other proposals regarding how to best alert non-English speakers.

## **B. Legal Basis**

9. Authority for the actions proposed in this *Further Notice* may be found in sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, (Act) 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

11. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>8</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>9</sup> The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>10</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>11</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>12</sup>

12. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having \$12 million or less in annual receipts.<sup>13</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>14</sup> According to Commission staff review of BIA Publications, Inc. Master Access

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<sup>4</sup> 5 U.S.C. § 604(a)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>7</sup> 15 U.S.C. § 632.

<sup>8</sup> 5 U.S.C. § 601(4).

<sup>9</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>10</sup> 5 U.S.C. § 601(5).

<sup>11</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

<sup>12</sup> See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, 40 (Jul. 2002).

<sup>13</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515120.

<sup>14</sup> Office of Management and Budget, *North American Industry Classification System: United States*, at 509 (1997). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from

(continued....)

Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>15</sup> must be included.<sup>16</sup> Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).<sup>17</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

13. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6 million or less in annual receipts as a small business.<sup>18</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>19</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>20</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>21</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>22</sup> According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

14. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having \$12.5 million or less in annual receipts.<sup>23</sup> According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year.<sup>24</sup> Of this total, 1,180 firms had annual receipts of under \$10

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external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *Id.* at 502-05, NAICS code 512120, Motion Picture and Video Production; NAICS code 512120, Motion Picture and Video Distribution; NAICS code 512191, Teleproduction and Other Post-Production Services; and NAICS code 512199, Other Motion Picture and Video Industries.

<sup>15</sup> "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

<sup>16</sup> "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size." 13 C.F.R. § 121.103(a)(4).

<sup>17</sup> *Broadcast Station Totals as of September 30, 2002*, FCC News Release (rel. Nov. 6, 2002).

<sup>18</sup> See 13 C.F.R. § 121.201, NAICS code 515112 (changed from 513112 in Oct. 2002).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

<sup>24</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (including Legal Form of Organization)*, Table 4, NAICS code 513220 (issued Oct. 2000).

million, and an additional 52 firms had receipts of \$10 million to \$24,999,999.<sup>25</sup> Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.<sup>26</sup>

15. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>27</sup> We have estimated that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.<sup>28</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

16. *Cable System Operators (Telecom Act Standard)*. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>29</sup> The Commission has determined that there are 67,700,000 subscribers in the United States.<sup>30</sup> Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>31</sup> Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.<sup>32</sup> The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>33</sup> and therefore are unable, at this time, to estimate more accurately the number of cable system

<sup>25</sup> *Id.*

<sup>26</sup> See U.S. Census Bureau, 2002 Economic Census, Industry Series: Information, Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 4,185 to 6,118. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

<sup>27</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

<sup>28</sup> Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

<sup>29</sup> 47 U.S.C. § 543(m)(2).

<sup>30</sup> See *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (rel. Jan. 24, 2001).

<sup>31</sup> 47 C.F.R. § 76.901(f).

<sup>32</sup> See *FCC Announces New Subscriber Count for the Definition of Small Cable Operators*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (rel. Jan. 24, 2001).

<sup>33</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

operators that would qualify as small cable operators under the size standard contained in the Act.

17. *Multipoint Distribution Systems.* The established rules apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>34</sup> This definition of small entity in the context of MDS auctions has been approved by the SBA.<sup>35</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

18. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating \$12.5 million or less in annual receipts.<sup>36</sup> This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of \$11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.<sup>37</sup>

19. *Instructional Television Fixed Service.* The established rules would also apply to Instructional Television Fixed Service (ITFS) facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS.<sup>38</sup> There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.<sup>39</sup> However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the established rules.

20. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging<sup>40</sup> and Cellular and Other Wireless Telecommunications.<sup>41</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer

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<sup>34</sup> 47 C.F.R. § 21.961(b)(1).

<sup>35</sup> See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 515210.

<sup>37</sup> See *supra* note 26.

<sup>38</sup> 13 C.F.R. § 121.201, NAICS code 515210.

<sup>39</sup> 5 U.S.C. § 601(3).

<sup>40</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517212.

employees. According to Commission data,<sup>42</sup> 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees. This SBA size standard also applies to wireless telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. According to the data, 437 carriers reported that they were engaged in the provision of wireless telephony.<sup>43</sup> We have estimated that 260 of these are small businesses under the SBA small business size standard.

21. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>44</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>45</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>46</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>47</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>48</sup> On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.<sup>49</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.<sup>50</sup>

22. *Incumbent Local Exchange Carriers (Incumbent LECs).* We have included small incumbent local exchange carriers in this present IRFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone

<sup>42</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (June 2005) (*Trends in Telephone Service*). This source uses data that are current as of October 1, 2004.

<sup>43</sup> *Id.* Table 5.3, page 5-5.

<sup>44</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*Broadband PCS Report and Order*); see also 47 C.F.R. § 24.720(b).

<sup>45</sup> See *Broadband PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

<sup>46</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>47</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

<sup>48</sup> See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999).

<sup>49</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

<sup>50</sup> In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>51</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>52</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>53</sup> According to Commission data,<sup>54</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

23. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>55</sup> According to Commission data,<sup>56</sup> 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed rules.

24. *Satellite Telecommunications and Other Telecommunications.* The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.<sup>57</sup> For the first category of Satellite Telecommunications, Census Bureau data

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<sup>51</sup> 15 U.S.C. § 632.

<sup>52</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>53</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>54</sup> *Trends in Telephone Service*, Table 5.3.

<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>56</sup> *Trends in Telephone Service*, Table 5.3.

<sup>57</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>58</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

25. The second category – *Other Telecommunications* – includes “establishments primarily engaged in ... providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>59</sup> Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional 6 firms had annual receipts of \$10 million to \$24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

26. There are potential reporting or recordkeeping requirements proposed in this *Further Notice*, particularly with regard to state and local EAS participation and participation by digital broadcasters. For example, the Commission is considering whether to adopt performance standards and reporting obligations for EAS participants.<sup>60</sup> The proposals set forth in this *Further Notice* are intended to advance our public safety mission and enhance the performance of the EAS while reducing regulatory burdens wherever possible.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>61</sup>

28. The *EAS NPRM* invited comments on a number of alternatives to the imposition of EAS obligations on the digital communications technologies. The Commission has considered each of those comments and in today’s *Order* imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission by adopting rules that expand the reach of EAS. We believe that requiring DTV, DAB, digital cable, DBS and SDARS providers to install and use EAS equipment will not impose undue regulatory or financial burdens.

29. This *Further Notice* seeks additional comment to help expedite the development of a robust, state-of-the-art, digitally-based public alert and warning system, and to further minimize the

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<sup>58</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (Including Legal Form of Organization)*, Table 4, NAICS code 513340 (issued Oct. 2000).

<sup>59</sup> Office of Management and Budget, North American Industry Classification System, 513 (1997) (NAICS code 513390, changed to 517910 in Oct. 2002).

<sup>60</sup> See, e.g., *supra* *Further Notice*, at para. 72.

<sup>61</sup> 5 U.S.C. § 603(c)(1) – (c)(4).



impact on small entities. In particular, we seek comment on how DTH and SDARS could deliver local alerts; how best to involve wireless providers; and how the Commission can best work with the states to help implement the EAS rules adopted in today's *Order* as well as to develop the next generation of alert and warning systems. We note that we sought specific comment concerning possible alternatives in our approach toward small entities in the context of making EAS accessible to persons with disabilities.<sup>62</sup>

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

30. None.

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<sup>62</sup> See *supra Order*, at paras. 74-80.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296*

Today, we take the important step of applying the emergency alert system (EAS) rules to digital media. We also continue our work to improve upon the current system.

Congress has charged the Commission with promoting the safety of life and property through the use of wire and radio communication. To fulfill this important directive, the Commission has developed EAS, a national warning system. While this system performs a critical function in ensuring public safety, it was developed in 1994 and relies on the delivery of alerts and warnings through analog radio and television broadcast stations and cable systems. Today, however, a large and growing percentage of television viewers and radio listeners receive their programming from digital media. In this *Order*, we update our rules to require the participation of digital television and radio, digital cable, and satellite television and radio in EAS. This will ensure that all television viewers and radio listeners have access to national and/or regional public alerts and warnings in the event of an emergency.

Equally, if not more, important, is our continued work to develop a more comprehensive and more robust alert system. Hurricane Katrina (and Hurricanes Rita and Wilma) have only served to emphasize the need for a comprehensive and robust alert system that allows officials at the national, state and local levels to reach affected citizens in the most effective and efficient manner possible. This system should have built-in redundancy features. Among other things, it should incorporate the internet, which was designed by the military to be robust and contains network redundancy functionalities. The system also should take advantage of advances in technology that enable officials to reach large numbers of people simultaneously through a variety of communications media. Our work in this area is of the utmost importance. I look forward to working with my fellow Commissioners to develop a public alert and warning system that is wide-reaching and furthers the Commission's core mission of promoting public safety through a robust communications system.

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Review of Emergency Alert System (EB Docket No. 04-296)*

In the world we live in today, telecommunications is the vital link that keeps us in touch with each other and with what is going on around us. Unfortunately, the world we live in today has come to be a very dangerous place. Therefore, it is critically important for telecommunications to serve as a reliable instant messenger of news and information that we and our families need to protect ourselves in sudden emergencies.

The Order and Further Notice we adopt today help assure that kind of reliability. By expanding the Commission's Emergency Alert System requirements to the new generation of digital communications services that American families increasingly rely on -- digital broadcast radio and TV, digital cable, and direct-to-home satellite TV and radio services -- the Order advances the goal of getting lifesaving information out to those who need it. And the Further Notice looks to added ways of guaranteeing that *no* American lacks access to emergency information, that *all* technologies are appropriately tasked to help safeguard our people, and that *any* state governor wishing to do so can activate EAS warnings for disasters impacting people in one or more states.

These are excellent outcomes, and I thank the Chairman and the staff who worked so diligently to develop this item and present it to us today. I also express thanks to those in the telecommunications industry who came forward proactively with proposals on how other technologies can contribute to a seamless digital emergency alert system. These issues are discussed in the Further Notice and I look forward to receiving public comment on them.

Given the complexity of telecom regulation, many of the items the Commission votes on have to be broken down and translated to understand the good things expected to come from them. This item isn't one of them: its benefits will be real and tangible, helping to protect our safety and well-being when we are most in peril. For this reason, I fully support it and vote to approve it.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Review of the Emergency Alert System*

This Order paves the way for bringing our warning system into the digital era. There is every reason to make this a priority, from the threat of more terrorism to the continuing ravages of nature that we have endured this summer. So I am pleased that we are moving to expand EAS into the new digital technologies that so many Americans are using.

Surely it is also time to explore a more comprehensive EAS system. People today use communications devices to receive information in so many ways -- wireline, wireless, radio and television broadcasting, satellite, cable, IP technologies, and others. To make our warning systems and information dissemination as effective as possible, we need to figure out how to integrate these diverse technologies.

While the Further Notice is rather brief, I hope everyone will realize the many questions that need to be addressed as we bring the EAS into the Twenty-first century. For example, we need to make sure that *all* Americans receive emergency information, including those with disabilities and those whose primary fluency is in a language other than English. In the recent hurricanes, tens of thousands of residents whose primary language is not English lacked access to the information and warnings that others were receiving. We need to solve this problem.

Secondly, we need to realize that although EAS is a national system, it also affords state and local authorities the capability to provide emergency information on everything from weather emergencies to Amber alerts that save abducted children. So we need to decide who exactly, and at what level, can activate this system. And does it make sense that employment of the system remains voluntary in most instances?

So there is a lot to do to complete this proceeding. And we do not have the luxury of time in these efforts—terrorists and hurricanes don't wait on us. These are critical questions that are integral to our public safety and homeland security efforts. I look forward to working on this with my colleagues and with our new Bureau which I hope will be up and running soon.

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: In the Matter of Review of the Emergency Alert System, EB Docket No. 04-296.*

Not only does Section One of the Communications Act of 1934 make the Commission responsible for promoting the “safety of life and property through the use of wire and radio communication,” it also charges the Commission with making communications available “to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” In this item, we take a few important steps toward satisfying these important statutory obligations, but there remains some heavy lifting to do very soon.

I am pleased to support this item, as it expands the obligation to transmit Presidential-level emergency messages from analog broadcast and cable to include new distribution platforms – digital broadcast and cable, and satellite radio and television. Equally important, this item encourages the voluntary transmission of multilingual emergency information in areas where a significant proportion of the population has its primary fluency in a language other than English. Until the Commission has had an opportunity to examine this issue more fully, I strongly encourage all EAS participants to provide this important public safety service.

We cannot overemphasize the importance of disseminating emergency information in multiple languages. In New Orleans alone, it is estimated that there were more than 50,000 Spanish-speaking residents, and the only Spanish language station in the area was off-air before Hurricane Katrina even reached city limits. It stayed off the air for the next seven days. While all Gulf Coast broadcasters performed admirably – with great personal sacrifice – to provide news coverage to millions of households, some non-English speaking households may have been left in complete darkness. As set forth in Section 1 of the Communications Act, we have an obligation to address this problem.

We must find ways to ensure that all households have access to emergency warnings and alerts in a language they understand and that EAS meets the needs of individuals with hearing and vision disabilities. All of us at the Commission should closely review and consider the comments of interested parties, and engage broadcasters, minority and disability groups in a constructive dialogue with the goal of achieving a sensible consensus on multilingual emergency alert information and disability access.

In the past four years, this nation has experienced several disasters – Hurricanes Katrina and Rita, the East Coast blackout and, of course, the September 11<sup>th</sup> terrorist attacks. Noticeably unused during all of these disasters was the activation of EAS — an alert system intended to deliver Presidential-level messages only.

While these recent disasters have focused attention on ways to improve our national system, clearly, we also need to focus attention on the ability of state governments to access EAS facilities to transmit emergency information, warnings and alerts. So it’s critical that we’re seeking comment on whether we should require EAS participants to transmit all EAS messages issued by the Governor of the state in which they provide services. Additionally, I am pleased we are seeking comment on how best to coordinate with state and local governments to help implement the expanded EAS rules we adopt today.

A final highlight is our request for comment on the integration of new technologies, primarily wireless devices such as cell phones, pagers, and PDA’s, into our current emergency response system. We seek comment, for example, on the benefits and limitations of the delivery of emergency alert messages through text-based messaging delivered by SMS or cell broadcast. While these technologies would complement, rather than replace, the current EAS, we should pay careful attention to practical

implications for underserved and rural communities. We should also consider alternative wireless technologies such as a proposal to take advantage of an existing wireless public alert service provided by the National Oceanic and Atmospheric Administration (NOAA).

We are acting on this issue with the urgency it deserves. Just last week, the Senate Commerce Committee approved legislation – the Warning, Alert, and Response Network (WARN) Act – to create an enhanced emergency alert system. The WARN Act would finance the creation of an All Hazards Alert System to deliver emergency warnings and alerts across a variety of devices, including mobile phones and Blackberry devices. While the National Program Office would be established within NOAA, the FCC along with National Institute of Standards and Technology and the Federal Emergency Management Agency would form a working group to develop this new, enhanced alert system and to prepare guidelines for the technical capabilities of the system. The Act would also give governors access to broadcast a message in their respective States.

I am pleased to support our decision to expand EAS to require, not just analog broadcast and cable, but also digital broadcast and satellite radio and television, to transmit national emergency warnings and alerts. The heavy lifting will come when we consider multilingual emergency information dissemination, greater disability access, coordination with state and local governments, and the integration of new wireless technologies into EAS. I thank the Chairman for his leadership on this matter, and I look forward to working with him and all of my colleagues on these and other EAS-related issues as quickly as possible.